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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,533	01/31/2002	Andrew Wells Phelps	UVD 0276 PA	3679

7590 02/11/2004
Killworth, Gottman, Hagan & Schaeff, L.L.P.
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Dayton, OH 45402-2023

EXAMINER

BOS, STEVEN J

ART UNIT PAPER NUMBER

1754

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,533

Applicant(s)

PHELPS ET AL.

Examiner

Steven Bos

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1754

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In the claims "low toxicity precipitating reagent" is recited however the instant specification does not define what is considered to be such. Instant pg. 7, lines 10-19 has been reviewed but does not define exactly what is considered to be "low toxicity". Applicant argues that "low toxicity is intended to refer to toxicity in general, rather than with respect to a particular animal" however instant pg. 7 appears to define toxicities with regard to rats for lanthanide nitrates and that bismuth is taken orally in common stomach remedies. This however is not sufficient to define what is meant by "low toxicity" since it is not clearly defined as such. Many other compounds are instantly claimed and it is not enabled as to which of these is considered to be "low toxicity" and which are not, as it is not enabled as to what the metes and bounds of "low toxicity" is. It is not clear that the recited oral toxicities (LD50) of the lanthanide nitrates are considered to be "low toxicity". It is also not enabled as to whether or not "nontoxic" is considered to be "low toxicity", ie. does "low toxicity" include nontoxic compounds.

Art Unit: 1754

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "low toxicity" in claims 1,2,9,11-14,22,24-26,34,35, is a relative term which renders the claim indefinite. The term "low toxicity" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The instant specification does not specify the metes and bounds of "low toxicity". LD50 values are recited with regard to lanthanum but it is not clear whether these are considered to be "low toxicity" values. Furthermore these values are oral toxicities to rats whereas applicant argues that "low toxicity is intended to refer to toxicity in general, rather than with respect to a particular animal."

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-17,40,43 are rejected under 35 U.S.C. 103(a) as being unpatentable over RU 2006484.

Art Unit: 1754

RU '484 suggests the instantly claimed process wherein the taught iron sulfate and aluminum sulfate would appear to meet the instantly claimed "low toxicity precipitating reagent" since iron sulfate and aluminum sulfate are nontoxic in low doses. See the abstract.

Claims 13-17, 40, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson '344.

Peterson suggests the instantly claimed process wherein the taught soluble zinc, cobalt and copper precipitating salts would appear to meet the instantly claimed "low toxicity precipitating reagent". See the abstract and col. 3.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

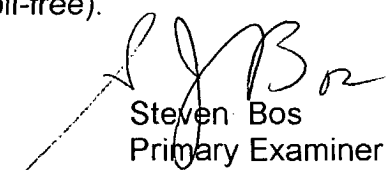
Applicant's arguments filed December 17, 2003 have been fully considered and they are persuasive with regard to the previous outstanding rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Bos whose telephone number is 571-272-1350. The examiner can normally be reached on M-F, 8AM-6PM but is on increased flexitime sch.

Art Unit: 1754

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven Bos
Primary Examiner
Art Unit 1754

sjb